9/25/01

Hearing: 16 August 7, 2001 RLS/JW

THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE T.T.A.B.

Paper No.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Bass Hotels & Resorts, Inc.

v.

Innco d/b/a Gateway Inn Express

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Opposition No. 115,090
to application Serial No. 75/530,706
filed on August 3, 1998

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Albert Robin of Robin, Blecker & Daley for Bass Motels & Resorts, Inc.

Richard R. Johnson of Shook, Hardy & Bacon, L.L.P. for Innco d/b/a Gateway Inn Express.

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Before Simms, Cissel, Hairston, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Bass Hotels & Resorts, Inc. (opposer), a Delaware corporation, has opposed the application of Innco d/b/a Gateway Inn Express (applicant), a Kansas corporation, to register the mark GATEWAY INN EXPRESS ("INN" disclaimed)

for motel services.[1] After applicant filed its answer denying the allegations in the notice of opposition, a trial was conducted. Only opposer took testimony and submitted exhibits, and only opposer filed a brief. An oral hearing was held which only opposer's attorney attended.

In the notice of opposition, opposer asserts prior use of the mark HOLIDAY INN EXPRESS by opposer and by predecessors and related companies in connection with the operating and licensing of others to operate a chain of hotels under that service mark. In its pleading, opposer claimed ownership of Registration No. 1,651,851, issued July 23, 1991 (renewal filed) for the mark HOLIDAY INN EXPRESS ("INN" disclaimed) for hotel and restaurant services. Opposer asserts that applicant's mark GATEWAY INN EXPRESS so resembles opposer's previously used and registered mark as to be likely to cause confusion, to cause mistake, or to deceive.

Opposer took the testimony of Mr. Tom Seddon, its vice president of marketing for Holiday Inn. Starting in 1990, the HOLIDAY INN EXPRESS hotel chain has grown to over 1,000 hotels in this country, with a new one opening

[1] Application 75/530,706, filed August 3, 1998, based upon applicant's allegation of a bona fide intention to use the mark in commerce.

about every two business days. Mr. Seddon testified that, in the trade, the HOLIDAY INN EXPRESS line of hotels identifies a limited service hotel brand referred to as "midscale without food and beverage." In 1998 alone, revenue from the operation of the HOLIDAY INN EXPRESS hotels was around $1 billion, with approximately two percent of that sum being spent on advertising (television, billboards, etc.).

Mr. Seddon testified concerning a tracking survey which showed that approximately 80 percent of the traveling public was aware of the HOLIDAY INN EXPRESS brand of hotels. He also testified that no competitors use "EXPRESS" in their names and that none uses "INN" followed by the word "EXPRESS."

During his testimony, status and title copies of the pleaded registration, as well as Registration No. 2,207,318, issued December 1, 1998, covering the mark HOLIDAY INN EXPRESS and design, were introduced. Mr. Seddon testified that recently the "EXPRESS" portion of this hotel name has been shown more prominently. Opposer also operates hotels under the names Holiday Inn, Holiday Inn Select, Staybridge Suites, Crowne Plaza, and Intercontinental.

With respect to the question of likelihood of confusion, Mr. Seddon testified, at 34 :

> A I think that a chain of Gateway Inn Express hotels would cause confusion among customers as to whether they were the same as our Holiday Inn Express brand or affiliated with our Holiday Inn Express brand. And when they're not, it would cause us to potentially lose sales.

In its brief, opposer argues that its priority has been established. With regard to the respective services, opposer contends that applicant's services are identified broadly enough in its application to include opposer's hotel services. Without any limitation in the respective registrations and application, opposer argues that we should presume that the respective services are offered to the same class of purchasers. It is opposer's position that, for moderately priced accommodations, there is no reason to believe that purchasers would exercise a higher degree of care in selecting short-term accommodations.

Because the respective services must be considered identical or directly competitive, opposer argues that the degree of similarity of the marks need not be as great. Here, both marks consist of three words, and the marks end in the identical words "INN EXPRESS." Opposer argues that the marks are similar in appearance and

meaning and that they are partially identical in sound. Opposer also contends that its mark is a famous one with 80 percent recognition amongst the traveling public and revenues in recent years of over $3 billion with millions of dollars in advertising. Opposer also notes that there is no evidence of third-party use of the words "INN EXPRESS" in hotel names. Although opposer has not pleaded that there is a likelihood of confusion with the marks of the other hotels which it operates, opposer does appear to argue in its brief that persons familiar with opposer's collection of hotel chains are likely to be confused as to sponsorship of applicant's motels. Finally, opposer asks us to resolve any doubt in its favor.

Upon careful consideration of this record and of opposer's arguments, we conclude that confusion is not likely. Even though the respective services-—motel services and hotel services--must be considered closely related, if not identical, being offered to a similar class of purchasers, we believe that the respective marks—-HOLIDAY INN EXPRESS and GATEWAY INN EXPRESS—-are simply different enough that even the same class of consumers will distinguish these marks and not attribute source or sponsorship to the same entity. We reach this

conclusion even though we agree with opposer that its asserted mark is famous in the hotel field. However, even though both marks have two words in common, the dominant feature of applicant's mark, the word GATEWAY, has no similarity in appearance, sound or meaning to opposer's mark. We also observe that the purchase of nightly accommodations is not an inexpensive or casual purchase (such as a bar of soap or bottle of shampoo, for example), and that purchasers of hotel and motel services are likely to exercise some degree of care in the purchasing decision. Accordingly, when the respective marks are considered in their entireties, even when opposer's mark is afforded the degree of protection it rightfully deserves, we find that confusion is unlikely.

Decision: The opposition is dismissed with prejudice.